

*Bonds And Liens On Construction
Work in Texas*

THE
PROPERTY
CODE
CHAPTER 53

*private
work*

THE
GOVERNMENT
CODE
CHAPTER 2253

*public
work*

THE
MILLER
ACT

*federal
work*

Published 2012

COMPILED BY
ASSOCIATED GENERAL CONTRACTORS
TEXAS BUILDING BRANCH



**BONDS AND LIENS ON
CONSTRUCTION WORK
IN TEXAS**

THE PROPERTY CODE -- CHAPTER 53

on
Private Work

THE GOVERNMENT CODE -- CHAPTER 2253

on
State and Local Public Work

THE MILLER ACT

on
Federal Work

Compiled by
TEXAS BUILDING BRANCH
ASSOCIATED GENERAL CONTRACTORS OF AMERICA, INC.
2012

FORWARD

Earlier versions of this Manual have been well received by the AGC membership throughout Texas. This newly revised edition incorporates the changes made by the Texas Legislature in the lien and bond laws through the 2011 Legislative Session and by the United States Congress with regard to changes in federal law through August, 2011.

*** * * CAUTION * * ***

DO NOT USE THIS MANUAL WITHOUT READING THE FOLLOWING:

LIEN AND BOND CLAIMS ARE REMEDIES OF LAST RESORT. The fact that such remedies might exist should never be used as a basis for extending credit to a non-creditworthy customer. **Credit is the life-blood of construction.** Contractors, subcontractors, and suppliers are as much in the business of credit as construction because they are lending substantial credit whenever they agree to 30 day or similar payment terms. Therefore, just as a bank or other financial institution requires and reviews credit information before lending money, contractors, subcontractors, and suppliers should obtain and evaluate credit information from their customer before extending credit.

KNOW YOUR CUSTOMER AND ITS CREDIT PRACTICES AND FINANCIAL CONDITION. Credit should not be extended unless you have current, accurate information about your potential customer's financial condition and credit history. Most suppliers do require contractors and subcontractors to complete a credit application. Any such application should inquire into the customer's current financial condition, including its unencumbered and liquid assets, all obligations (including contingent), cash flow, and credit references (which must be checked). It is not customary for contractors and subcontractors to require their customers to complete a credit application; however, there are alternative sources of credit information which should be utilized. As a general rule, contractors should ask for financial information from an owner, including the owner's current financial statement and information about financing for the project. If a subcontractor does not regularly work with a particular general contractor, the subcontractor should ask for the general's current financial statements. Additionally, the potential customer's payment history should be carefully examined. Order and review credit reports. Join and participate in credit organizations such as the National Association of Credit Managers. Call other contractors, subcontractors, and suppliers who have dealt with the customer.

DOCUMENT YOUR CREDIT SALE. Written construction contracts, subcontracts, or charge agreements (for suppliers selling on 30 day accounts) which are fair to all parties, clearly express the terms of payment, and provide reasonable remedies for the failure to satisfy the payment terms are absolutely essential.

MONITOR YOUR CUSTOMER'S PAYMENT PRACTICES. Once the decision is made to extend credit to a customer (which, for general contractors, includes owners), monitor the customer's payment practices. **If the customer is not paying according to your contractual terms, take action immediately.** Do not wait for a bad problem to get worse. Send the applicable lien or bond claim notices, change the credit terms (shortening time for payment), require joint checks, or cut off further credit.

KNOW YOUR RIGHTS BEFORE A CREDIT PROBLEM ARISES. Do not wait until a payment problem arises before reading this Manual or learning your rights under the law. Because your rights depend upon your providing certain notices to third parties (in some cases, the notices must be

given in the early stages of the problem), you may have already lost your lien and bond rights by the time you read the Manual and figure out what to do.

WHEN A SIGNIFICANT PROBLEM ARISES, SEEK SOUND LEGAL ADVICE. No one likes to use a lawyer. They are expensive and they sometimes seem to find more problems than solutions. Nevertheless, **unless you are very well versed in this complex area of the law (and few of us are), you should consult with an attorney who is knowledgeable in this area of the law when any significant problem arises.** And, **you should do so early in the process.** By waiting, you may have lost valuable rights to successfully assert a lien or bond claim. If you do not already have a lawyer who is knowledgeable in this area, please contact your local AGC Chapter office. They may be able to supply you with the names of one or more lawyers who are associate members in AGC or who represent other contractors, subcontractors, or suppliers in the area.

UNDERSTAND THE LIMITS OF THIS MANUAL OR ANY OTHER SIMILAR FORM BOOK. This Manual is simply an initial reference point. It is not intended to address every issue that may arise in relation to a claim or transaction covered by the lien and bond laws and **it is not designed to be a substitute for sound legal advice.** Rather, this Manual is intended to provide you with a basic framework of information regarding the lien and bond laws covering both private and public (local, state, and federal) works projects. The forms provided in this Manual are for illustration purposes only. Any such form may need to be modified (by someone who understands this area of the law) to fit a particular situation.

In using this Manual, you will notice that it is divided into three sections:

- a. claims arising on **private projects** which are governed by Chapter 53 of the **Texas Property Code** (formerly the Hardeman Act);
- b. claims arising on **local and state public works projects** in Texas which are governed by Chapter 2253 of the **Texas Government Code** (formerly the McGregor Act); and
- c. claims arising on **federal public works projects** in Texas which are governed by the **Miller Act** (40 U.S.Code §§ 3131 - 3134).

Each section will include a discussion of how the particular law works for claims arising on that type of project and what actions must be taken by a claimant in order to "perfect" the claim. Illustrative forms will be provided. An Appendix (at the end of the Manual) will include the complete text of each statute (as of **January 1, 2012**).

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The Texas Building Branch of the Associated General Contractors is indebted to many individuals and associations who have contributed time and talent in the preparation of this Manual. We are especially indebted to Austin construction lawyer, **Robert C. Bass, Jr.**, for his work in preparing this latest revision. If you have questions about the information in this Manual, or if you have comments or suggestions about it, please feel free to contact:

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CONTENTS

Chapter	Page
I. OVERVIEW	1
A. History of Lien Laws / Basic Premises	1
B. Determining the Type of Claim	2
C. Early Notice is the Only Effective Notice	3
D. Special Terminology	3
<i>Chart: Construction Tiers [Private and Non-Federal Public Works]</i>	5
II. PRIVATE WORKS: TEXAS PROPERTY CODE	6
A. Original Contractor's Lien	7
B. Requirements for Perfection of Original Contractor's Lien	8
1. File Lien Affidavit	8
2. Notice to Owner of Lien Filing	8
C. Subcontractor's Statutory Liens	8
1. Fund Trapping	9
2. Lien on Statutory Retainage	9
D. Requirements for Perfection of Subcontractor's Statutory Liens	10
1. First Tier Subcontractor Requirements	11
a. Notice of Claim to Owner	11
b. File Lien Affidavit	12
c. Notice to Owner of Lien Filing	13
2. Second Tier Subcontractor Requirements -- Notice to Original Contractor	13
E. Bond Claim on Private Projects	14
1. Advantage of Bond Claim	14
2. Requirements for Perfecting Bond Claim	14
F. Illustrations of Lien Perfection and Bond Claim Requirements on Private Works Projects	15

	<i>Chart: Perfecting Lien and Private Works Bond Claims [Projects other than Residential]</i>	16
	<i>Chart: Perfecting Lien and Private Works Bond Claims [Residential]</i>	17
	<i>Chart: Latest Dates for Mailing Notices and Filing Affidavits [Projects other than Residential]</i>	18
	<i>Chart: Latest Dates for Mailing Notices and Filing Affidavits [Residential]</i>	19
III.	STATE OR LOCAL PUBLIC WORKS: TEXAS GOVERNMENT CODE	20
	A. Who is protected?	20
	B. Requirements for Perfection of Government Code Bond Claim	21
	1. Subcontractors with a Direct Contract with Prime	21
	2. Subcontractors without a Direct Contract with Prime	23
	C. Mandatory Compliance	23
	D. Notice to Governmental Entity	24
	E. Lien Against Contract Funds	24
	1. Requirements for Lien Against Funds	24
	2. Public Official's Duty	24
	F. Illustrations of Bond Claim Requirements for Public Works Projects	25
	<i>Chart: Perfecting Government Code Bond Claims</i>	26
	<i>Chart: Latest Dates for Mailing Notices for Government Code Bond Claims</i>	27
IV.	FEDERAL PUBLIC WORKS: MILLER ACT	28
	A. Who is Protected?	28
	<i>Chart: Construction Tiers [Federal Projects]</i>	28
	B. Notice Requirements	29
	C. Enforcement	29
	D. Identity of Surety	30

V.	SPECIAL ISSUES	30
A.	Residential Construction and Homesteads	30
	1. Contract with Owner	31
	2. Contractor/Lender Disclosures	31
	3. Special Requirements for Lien Claimants	32
B.	Construction Trust Funds	33
C.	Bills Paid Affidavits	34
D.	Lien for Architects, Engineers, and Surveyors	35
E.	Lien for Landscaping and Demolition Services	36
F.	Enforcement of Claims	37
G.	Lien Removal Procedures	38
H.	Liability for False or Fraudulent Liens	39
	1. Slander of Title	39
	2. Perjury and Fraud	39
	3. Offenses for False Liens	39
I.	Leasehold Improvements	40
J.	Lien on Removables / Priorities	40
K.	Obtaining Information	42
L.	Contractual Retainage	42
M.	Claims for Specially Fabricated Items	51
N.	Certified Mail and Actual Delivery	52
O.	Computing Deadlines	52
P.	Subcontractor Bonds	52
Q.	Bonding around Lien Claims	53
R.	Dealing with Sureties	54
S.	Waivers and Releases of Liens and Claims	56

APPENDIX "A" -- FORMS

Page

ILLUSTRATIVE FORMS [INDEX]

A - 1

FORMS FOR PERFECTING CLAIMS ON PRIVATE WORKS

1. *PRIVATE FORM 1-A*: Affidavit Claiming a lien A - 3
2. *PRIVATE FORM 1-B*: Notice of Filed Affidavit A - 6
3. *PRIVATE FORM 2-A*: Notice of Claim to Owner [Non-Residential] A - 8
4. *PRIVATE FORM 2-A*: Notice of Claim to Owner [Residential] A - 10
5. *PRIVATE FORM 3*: Notice to Original Contractor [2nd Month] A - 12
6. *PRIVATE FORM 4-A*: Notice of Contractual Retainage Agreement
[Pre-2011 Statutory Changes] A - 14
7. *PRIVATE FORM 4-B*: Notice of Contractual Retainage Agreement
[Post-2011 Statutory Changes] A - 16
8. *PRIVATE FORM 5*: Notice of Specially Fabricated Items A - 18
9. *PRIVATE FORM 6-A*: Conditional Waiver for Progress Payments A - 20
10. *PRIVATE FORM 6-B*: Unconditional Waiver for Progress Payments A - 22
11. *PRIVATE FORM 6-C*: Conditional Waiver for Final Payment A - 24
12. *PRIVATE FORM 6-D*: Unconditional Waiver for Final Payment A - 26
13. *PRIVATE FORM 7-A*: Full Release of Lien and Claim A - 28
14. *PRIVATE FORM 7-B*: Partial Release of Lien and Claim A - 30
15. *PRIVATE FORM 7-C*: Release of Lien Only A - 32
16. *PRIVATE FORM 8*: Request to Owner for Notification of
Termination or Abandonment of Original Contract A - 34

FORMS FOR PERFECTING CLAIMS ON STATE AND LOCAL PUBLIC WORKS

1. *PUBLIC FORM 1*: Notice of Claim to Surety with
Sworn Statement of Account A - 36
2. *PUBLIC FORM 2*: Notice of Claim for Retainage (to Surety) A - 39
3. *PUBLIC FORM 3*: Notice to Prime Contractor (2nd Month) A - 41

- | | | |
|----|---|--------|
| 4. | <i>PUBLIC FORM 4</i> : Notice of Contractual Retainage Agreement (to Prime) | A - 43 |
| 5. | <i>PUBLIC FORM 5</i> : Notice of Specially Fabricated Items (to Prime) | A - 45 |

FORMS FOR PERFECTING CLAIMS ON FEDERAL PUBLIC WORKS

- | | | |
|----|--|--------|
| 1. | <i>FEDERAL FORM 1</i> : Notice of Claim to Prime Contractor and Surety | A - 47 |
|----|--|--------|

APPENDIX "B" -- STATUTES

Page

A. PRIVATE WORKS PROJECTS

CHAPTER 53, TEXAS PROPERTY CODE Mechanic's Liens and Payment Bonds	B - 2
---	-------

CHAPTER 162, TEXAS PROPERTY CODE Construction Trust Funds	B - 32
--	--------

B. PUBLIC WORKS PROJECTS

CHAPTER 2253, TEXAS GOVERNMENT CODE Payment Bonds on State and Local Public Projects	B - 35
---	--------

C. FEDERAL WORKS PROJECTS

MILLER ACT [40 U. S. CODE ANN. §§ 3131-3134] Payment Bonds on Federal Projects	B - 43
---	--------